



February 20, 2009

HOUSE BILL No. 1443

DIGEST OF HB 1443 (Updated February 18, 2009 4:48 pm - DI 92)

Citations Affected: IC 11-10; IC 35-38.

Synopsis: Courts and corrections. Allows a sentencing court to expunge the records of certain felony and misdemeanor convictions committed before a person was 25 years of age if 12 years have passed since: (1) the completion of the person's sentence; and (2) the satisfaction of any other obligations imposed on the person as a part of the sentence. Allows a law enforcement agency, prosecuting attorney, or court to gain access to permanently sealed records under certain circumstances. Provides that if a court orders a person's records to be expunged, the person: (1) shall be treated for all purposes as if the person had not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records; and (2) may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records. Provides that if an inmate in the department of correction (DOC) requests to have a tattoo removed before being released from the DOC, the DOC may pay expenses related to the tattoo removal and provide the tattoo removal before the inmate's release date.

Effective: July 1, 2009.

Turner, Summers, Crawford, Welch

January 13, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

February 17, 2009, reassigned to Committee on Ways and Means.

February 19, 2009, amended, reported — Do Pass.

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February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1443

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-10-12-7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 7. (a) The department, at least ninety (90) days before**
4 **a committed offender will be:**

- 5 (1) released on parole;
6 (2) assigned to a community transition program;
7 (3) discharged from the department; or
8 (4) released on probation;

9 may offer to the inmate to remove any tattoos on the inmate's
10 body.

11 (b) If an inmate requests the department to remove a tattoo on
12 the inmate's body under subsection (a), the department may,
13 subject to the approval of the medical director of the department:

- 14 (1) carry out the removal of tattoos from the inmate at a
15 facility designated by the commissioner of the department;
16 and
17 (2) remove tattoos on the face, neck, arms, and hands of the

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inmate.

(c) The department shall pay expenses related to tattoo removal conducted under this section and provide the tattoo removal before the inmate is:

- (1) released on parole;
- (2) assigned to a community transition program;
- (3) discharged from the department; or
- (4) released on probation.

SECTION 2. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 8. Expungement of Conviction Records

Sec. 1. This chapter applies to:

- (1) all felonies and misdemeanors regardless of when an offense was committed; and
- (2) all records, including juvenile records, created as a result of an allegation that a person committed a felony or misdemeanor before the person became twenty-five (25) years of age.

Sec. 2. (a) Except as provided in subsection (b), twelve (12) years after the date a person completes the person's sentence and satisfies any other obligations imposed on the person as a part of the sentence, the person may petition a sentencing court to expunge from:

- (1) a court's files;
- (2) the files of the department of correction; and
- (3) the files of any other person who provided treatment or services to the petitioning person under a court order;

the records concerning the person's involvement in criminal or juvenile court proceedings.

(b) A person convicted of any of the following before, on, or after the date the person became twenty-five (25) years of age may not petition a court under subsection (a):

- (1) Murder (IC 35-42-1-1).
- (2) A sex crime under IC 35-42-4.
- (3) A crime in which the victim suffered serious bodily injury.
- (4) A crime that involved the use of a deadly weapon.
- (5) A crime that involved a victim less than eighteen (18) years of age.
- (6) A crime of violence not described in subdivisions (1) through (5).
- (7) More than one (1) felony.

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1 **Sec. 3. In considering whether to grant an expungement petition**
 2 **under this chapter, the court shall review the following:**

- 3 **(1) Whether the person has been rehabilitated to the court's**
 4 **satisfaction.**
 5 **(2) Any other mitigating factors, including the following:**
 6 **(A) Job performance.**
 7 **(B) Job retention.**
 8 **(C) Community service.**
 9 **(D) Fulfillment of family and child support obligations.**
 10 **(E) Completion of restitution to the victim.**

11 **Sec. 4. The court may not grant an expungement petition under**
 12 **this chapter if the person has been convicted of:**

- 13 **(1) any felony; or**
 14 **(2) a Class A misdemeanor;**

15 **that the person committed on or after the day the person became**
 16 **twenty-five (25) years of age.**

17 **Sec. 5. If the court grants the expungement petition of a person**
 18 **under this chapter, the court shall do the following:**

- 19 **(1) Order:**
 20 **(A) the department of correction; and**
 21 **(B) each:**
 22 **(i) law enforcement agency; and**
 23 **(ii) other person;**
 24 **who incarcerated, provided treatment for, or provided**
 25 **other services for the person under an order of the court;**
 26 **to prohibit the release of the person's records or information**
 27 **in the person's records to anyone without a court order.**
 28 **(2) Order any:**
 29 **(A) state;**
 30 **(B) regional; or**
 31 **(C) local;**
 32 **central repository for criminal history information to send the**
 33 **person's records to the court.**
 34 **(3) Seal any court records related to the allegation referred to**
 35 **in section 1 of this chapter on which a felony conviction was**
 36 **based and any proceeding related to the allegation.**
 37 **(4) Notify the clerk of the supreme court to seal any records**
 38 **in the clerk's possession concerning:**
 39 **(A) the allegation described in subdivision (3); or**
 40 **(B) any proceeding related to the allegation;**
 41 **if an appeal was taken.**

42 **Sec. 6. If an expungement petition of a person is granted under**

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1 this chapter, information concerning the person's arrest or
 2 conviction may not be placed or retained in any state central
 3 repository for criminal history information.

4 Sec. 7. (a) If an expungement petition of a person is granted
 5 under this chapter, the records of:

- 6 (1) the sentencing court;
- 7 (2) a juvenile court;
- 8 (3) a court of appeals; and
- 9 (4) the supreme court;

10 concerning the person shall be permanently sealed. Other records
 11 concerning the person may be given to the person or destroyed.

12 (b) Notwithstanding subsection (a), a law enforcement agency,
 13 prosecuting attorney, or court may submit a written application to
 14 a court that granted an expungement petition under this chapter
 15 to gain access to any records that were permanently sealed under
 16 subsection (a). If a person who submits a written application under
 17 this subsection shows good cause for unsealing the records
 18 described in subsection (a), the court that granted the expungement
 19 petition shall:

- 20 (1) order the records to be unsealed; and
- 21 (2) allow the person who submitted the written application to
 22 have access to the records.

23 If a court orders records to be unsealed under this subsection, the
 24 court shall order the records to be permanently resealed at the
 25 earliest possible time after the reasons for unsealing the records
 26 cease to exist.

27 Sec. 8. (a) If a person whose records are expunged under this
 28 chapter brings a civil action that might be defended with the
 29 contents of the records, the defendant is presumed to have a
 30 complete defense to the action.

31 (b) For the plaintiff to recover in an action described in
 32 subsection (a), the plaintiff must show that the contents of the
 33 expunged records would not exonerate the defendant.

34 (c) In an action described in subsection (a), the plaintiff may be
 35 required to state under oath whether:

- 36 (1) the plaintiff had records in the criminal justice system;
 37 and
- 38 (2) those records were expunged.

39 (d) In an action described in subsection (a), if the plaintiff denies
 40 the existence of the records, the defendant may prove the existence
 41 of the records in any manner compatible with the law of evidence.

42 Sec. 9. If a court orders a person's records to be expunged under

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- 1 **this chapter, the person:**
2 **(1) shall be treated for all purposes as if the person had not**
3 **been arrested for or convicted of the felony or misdemeanor**
4 **recorded in the expunged records; and**
5 **(2) may legally state on an application for employment or any**
6 **other document that the person has not been arrested for or**
7 **convicted of the felony or misdemeanor recorded in the**
8 **expunged records.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1443, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 11-10-12-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. (a) The department, at least ninety (90) days before a committed offender will be:**

- (1) released on parole;**
- (2) assigned to a community transition program;**
- (3) discharged from the department; or**
- (4) released on probation;**

may offer to the inmate to remove any tattoos on the inmate's body.

(b) If an inmate requests the department to remove a tattoo on the inmate's body under subsection (a), the department may, subject to the approval of the medical director of the department:

- (1) carry out the removal of tattoos from the inmate at a facility designated by the commissioner of the department; and**
- (2) remove tattoos on the face, neck, arms, and hands of the inmate.**

(c) The department shall pay expenses related to tattoo removal conducted under this section and provide the tattoo removal before the inmate is:

- (1) released on parole;**
- (2) assigned to a community transition program;**
- (3) discharged from the department; or**
- (4) released on probation."**

Page 2, line 19, delete "may" and insert "**shall**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1443 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 19, nays 0.

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